

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

DATE: FEB 20 1981

SUBJECT: RCRA/UIC Interface Issues  
UIC GUIDANCE #13

FROM: Victor J. Kimm, Deputy Assistant Administrator  
Office of Drinking Water (WH-550)

TO: Water Supply Branch Chiefs (Regions I - X)

I. Purpose

The purpose of this guidance is to explain new developments in the Agency's policy for regulation of wells injecting hazardous waste and their implications for the UIC Program and the States' Primacy requirements.

II. Summary

In the May 19, 1980 set of regulations Class IV wells injecting hazardous waste directly into an underground source of drinking water were banned effective six months after the date of an effective UIC program. At the same time, to insure their legality until a UIC permit could be issued, hazardous waste injection facilities were made subject to interim status requirements under RCRA. Technical requirements applying to Class I wells injecting hazardous waste similar to those of 40 CFR 146 were proposed under Part 265. Technical requirements for Class IV wells injecting above underground sources of drinking water were reserved as they were in the June 24, 1980 UIC regulations.

The Agency has now repropose a new approach to regulation of facilities injecting hazardous wastes where requirements under both the RCRA and the SDWA will be applied. This new approach is outlined in the reproposal to Parts 260, 264 and 122 published February 5, 1981 in the Federal Register, and is explained in this guidance.

Since these new regulations are only repropose, their impact on the UIC program is minimal at the present time. States can obtain primacy by satisfying the promulgated requirements in Part 146 and §122.45 for Class I wells and implementing the ban on mainliners for Class IV wells.

III. Background

When regulations under the Resource Conservation and Recovery Act (RCRA) Subtitle C program were first proposed in December 1978, and when the Underground Injection Control

(UIC) regulations under the Safe Drinking Water Act (SDWA) were proposed (August 1976) and repropoed in April 1979, disposal of hazardous wastes via underground injection was regulated solely under the SDWA and specifically excluded from RCRA. The split in jurisdiction was the well head with everything below regulated under UIC and all attendant surface facilities regulated under RCRA. Under the repropoed UIC regulations, Class I wells were subject to permitting and all Class IV wells were to be banned.

In the May 1980 set of regulations, it was decided that wells injecting hazardous wastes were subject to dual regulation under both RCRA and SDWA. To insure their legality, existing hazardous waste injection facilities were made subject to interim status requirements under RCRA. New facilities could be authorized under a temporary RCRA permit. As soon as a UIC program came into effect, however, these facilities would be permitted under UIC and be deemed to have a permit by rule under RCRA.

At the same time it was decided that only certain Class IV wells, those injecting directly into underground sources of drinking water ("mainliners"), would be banned. Two options were repropoed to regulate Class IV wells injecting above USDWs.

These decisions are explained in the preambles to Part 265, Subpart R (proposed technical requirements for injection wells under interim status), and Part 122 (45 FR 33280 et seq. and 45 FR 3331 et seq., May 19, 1980.) At the same time, the Agency stated that the UIC ban on mainliners (scheduled to be effective six months from the date of a State program for existing wells and immediately for new wells under UIC) might be carried out during interim status under RCRA, and thereby be effective sooner. Comments were requested on this new approach but few were received.

#### The February, 1981 RCRA Reproposal

The regulatory approach toward hazardous waste disposal has undergone major changes since the 1979 proposal. The new approach termed a "non-numerical health and environmental standard" was first announced in the October 1980 notice of rulemaking published in the Federal Register. The considerable comment received on this notice has prompted the Agency to repropose the standards for existing land disposal facilities. These standards were signed by the Administrator on January 17th and published in the Federal Register on February 5th. During the formulation of these standards, the question of how hazardous waste injection

should be regulated was reopened and received a great deal of consideration within OWWM.

The regulations repropoed this month contain a new approach to the regulation of these wells explained in the preamble of repropoed Part 264, Subpart A. Basically the Agency decided to resolve the problems of which criteria and standards to apply by applying both. Both acts are now cited in the Authority section of the preamble to the repropoal for "Hazardous Waste Management System; General and Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities and EPA Administered Permit Programs, The Hazardous Waste Permit Program" 40 CFR Parts 260, 264 and 122.

Under this approach only certain wells would be eligible for exclusive jurisdiction under the UIC program (i.e. a UIC permit would be deemed sufficient justification for a permit by rule under RCRA) while for all other wells the RCRA standard would have to be applied and a RCRA permit obtained. This is explained in the preamble to the proposed amendments to §122.26:

"The permit by rule allows UIC exclusive jurisdiction in those circumstances when it is clear that the RCRA standard will be complied with. Those circumstances exist only when no waste will enter a surficial aquifer and no water will be withdrawn for use from the zone of containment within the injection zone. In all other circumstances, the RCRA criteria and standards will apply. Due to the choice to promulgate under both laws, permits using the RCRA rule may be issued by those administering the UIC program."

The RCRA standard referred to in this paragraph is that "leachate and other subsurface discharges that will enter into and migrate within a ground water aquifer will not mingle with and thereby affect any ground water which is being or may in the future be collected or withdrawn for domestic, agricultural, industrial, commercial or other uses."

Under this proposed new approach, UIC permits could only be issued for:

1. Class I wells injecting below all USDWs; and
2. Class I wells injecting into an exempted aquifer or a non USDW but below the uppermost aquifer;

where the operator can make a showing that no water is or will be withdrawn from the injection zone.

All other wells would require a RCRA/BEJ permit.

#### Implications for the UIC Program

These regulations are only proposed and have a 180 day comment period. Therefore no final regulations can possibly be expected for another year, and they will not be effective for six months after promulgation (i.e. mid 1982). Final requirements for Interim Status Standards (Part Subpart R) have not been promulgated and at this time their fate is uncertain.

Some interim final regulations under Part 267 will be published in the Federal Register shortly which will allow start up of new facilities before the final permitting requirements are in place. These regulations apply only to new Class I injection wells used to inject hazardous waste and are similar to provisions of Part 146. The regulations are effective six months from the date of promulgation, (i.e. August 1981).

Under the RCRA time schedule, existing wells injecting hazardous waste are currently under interim status and will remain that way until at least mid-1982 when permitting standards become available. New Class I wells can apply for a RCRA permit sometime in August, 1981. However §122.30 has not been amended at this time and a permit under RCRA can only be issued until approval or promulgation of a UIC program in a State.

We expect that most UIC programs will be in place by the time RCRA permitting standards become effective which will greatly simplify the UIC/RCRA interface issues.

#### IV. Guidance

##### Primacy Applications

Currently states need only consider the promulgated regulations in their primacy application which means that they must satisfy the requirements of Part 146 and §122.45 for Class I wells, and implement the ban on mainliners for Class IV. The Agency welcomes the States' ideas on how the other Class IV wells should be regulated. Some States have already decided to ban all Class IV wells which is perfectly legitimate since a State can implement requirements that are more stringent than the Federal Requirements.

### Use of the RCRA Notification Information

The States or the Regions also need to obtain copies of the RCRA notification information which is now available on computer print out. All facilities handling hazardous wastes were required to notify the Agency on or before August 19, 1980.

Approximately 800 facilities have reported an "injection well located at their installation". For the purpose of the notification an injection well was defined as "any hole in the ground that is deeper than it is wide and that is used for the subsurface placement of fluid including septic tanks" and could be a Class I, II, III, IV or V well. A follow-up is necessary to find out how many of these 800 facilities actually have a Class IV well on site. This could be in the form of telephone calls or letters to the facility owner or operator. The information obtained should become part of the UIC inventory, and be used to start implementing the ban on mainliners.

### V. Implementation

We suggest that you inform the States of these new developments in the Agency's policy on regulation of wells used to inject hazardous waste and solicit their comments on regulation of Class IV wells other than mainliners. These comments could be very useful in developing the final regulations for these wells.

### VI. Filing Instruction

This guidance should be filed as Ground Water Program Guidance #13.

VII. For further information on this guidance document contact:

Francoise Brasier  
Geologist  
Ground Water Protection Branch (WH-550)  
Environmental Protection Agency  
401 M Street, SW  
Washington, DC 20460  
(202) 426-3934